

*Don* collecting [a] desired price [for the product]  
information corresponding to a price desired to purchase the  
product proposed by each bidder in the auction, and a maximum  
margin of the price acceptable to pay proposed by each bidder  
via the network; and

if the auction assumes a competitive state by the  
desired price information proposed by [one of] the plurality  
of bidders [coincides with the desired price proposed by  
another bidder and the auction assumes a competitive state],  
[for] resolving the competitive state in accordance with the  
maximum margins proposed by the competitive bidders.

REMARKS

The Applicants request reconsideration of the rejection.  
Claims 16-33 are pending.

The Applicants request the Examiner to acknowledge the  
claim for priority and receipt of the certified priority  
document, which was submitted with the application papers as  
originally filed in application Serial No. 08/916,154 on  
September 2, 1997.

The Applicants submit herewith a copy of the Form PTO-  
1449 filed on February 18, 2000, and respectfully request the  
Examiner to initial and return a copy of the Form PTO-1449 as  
an indication that the documents have been considered.

Claim 32 has been amended to correct the informality noted by the Examiner in item 4 on page 2 of the Office Action.

Claims 16-31 and 33 stand rejected under 35 U.S.C. §112, second paragraph, for the various reasons set forth on pages 2-3 of the Office Action. The Applicants submit that the originally-filed claims clearly inferred the involvement of computers, when read properly upon the specification. However, to remove any doubt as to the field of the invention, the claims have been amended to expressly recited that the method and apparatus involve computers. No change to the scope of these claims is made by these amendments.

Claims 16-33 also stand rejected under 35 U.S.C. §103 as being unpatentable over Fujisaki U.S. Patent No. 4,789,928 (Fujisaki) in view of the article by Chavez et al, "Kasbah: An Agent Marketplace for Buying and Selling Goods", (Chavez). The Applicants respectfully traverse.

Fujisaki is cited as disclosing that computer-based auctions were known to the prior art. As noted by the Examiner, Fujisaki fails to teach the invention's important feature that a maximum margin of the price acceptable to pay proposed by each bidder is collected and considered in resolving a competitive state arising during the auction. Thus, the Examiner cites the Chavez article as "suggesting" the claimed maximum margin and treatment thereof.

The Applicants note, first, that Chavez is not relevant to either the field of the invention or to the field of the Fujisaki disclosure. Chavez is directed to an agent market place for buying and selling goods, wherein selling agents and buying agents seek each other out and negotiate a deal based upon desired and highest acceptable (or lowest acceptable) prices. Chavez does not belong to the auction art, but to the art of up-front negotiation of price. In this regard, the Applicants note that page 5, paragraph 1 of Chavez suggests that the "future" may hold a scenario in which the Chavez system ("Kasbah") may be used for auctions; however, Chavez points to the need for "specialized agents" in such a futuristic system. Thus, Chavez expressly states that the disclosed Kasbah is not appropriate in the auction environment.

In combination with Fujisaki, which combination appears to be impossible at any rate in view of the paragraph just discussed, Chavez can teach no more than a modification in which the seller and buyer are determined in advance and the transaction between them is automatically performed by an adjustment downward of the seller's offer or upward of the buyer's offer, to arrive at a settlement price. In contrast, in a true auction, there is one seller and plural bidders, wherein the bidders compete against each other to arrive at a final price. According to the claimed invention, if the auction reaches a competitive state among plural bidders, the

competitive state is resolved in accordance with maximum margins proposed by the competitive bidders. The claims require that the maximum margin be related to the price acceptable to pay proposed by each bidder. The Chavez, "highest possible price" is not used to resolve a competitive state with respect to a single selling agent, but is used in negotiation with multiple selling agents, contrary to the auction environment of the claimed invention. It is apparent, therefore, that Chavez is directed to a different system, requiring plural sellers and plural buyers, and does not resolve a competitive state according to the claimed invention. Moreover, in combination with Fujisaki (an auction in which plural bidders compete with respect to a single seller), Chavez does not resolve the auction by the "highest acceptable price", but by the "lowest acceptable price" established by the seller.

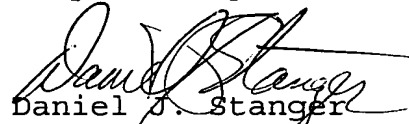
For each of the foregoing reasons, the Applicants submit that the claimed invention patentably defines over the combination of Fujisaki and Chavez, and request reconsideration of the rejection.

In closing, the Applicants note the Examiner's Remarks contained on pages 12-13 of the Office Action, in which various court cases decided between 1916 and 1973 are briefly discussed with respect to general principles apparently considered to be relevant to the present prosecution. The Applicants submit, for the record, that the cases cited by the

Examiner do not apply to the present prosecution for the reasons asserted in the Office Action. Because the Examiner's Remarks are broadly expressed without specifically supporting a rejection, the Applicants provide no further comments at this time.

In view of the forgoing amendments and remarks, the Applicants request reconsideration of the rejection and allowance of the claims.

Respectfully submitted,

  
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